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IN THE

Supreme Court of the United States

No. 48 — October Term, 1949

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ROSETTE SORGE SAVORGNAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, J. HOWARD McGRATH, THE ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, and WATSON B. MILLER, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petition For Rehearing

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The Opinion of the Supreme Court of the United States in the above entitled cause was delivered on January 9, 1950, and time for filing the within petition was extended by Order of the Honorable Harold H. Burton, Associate Justice of the Supreme Court of the United States, to and including March 1, 1950.

Comes now Rosette Sorge Savorgnan, petitioner in the above entitled cause, and respectfully petitions the Court for a rehearing of this case. In support of her petition for

rehearing, petitioner urges this Court's attention be invited to certain important and determinative points of fact and law in this case.

The vital question presented in this petition for rehearing is this:

> *Did the petitioner take the oath of renouncing her American citizenship and take the oath of allegiance to the King of Italy so as to comply with the conditional grant of the Royal Decree conceding her Italian citizenship.*

I.

THE GRANTING OF ITALIAN CITIZENSHIP WAS NOT ESTABLISHED AND WAS LIKEWISE CONDITIONAL UPON PETITIONER TAKING THE OATH.

This Court on page 3 of the Opinion recited:

> "Insofar as material, the undisputed facts and those found by the District Court are as follows:
>
> "* * * In August, the petitioner was granted Italian citizenship. * * *."

It is respectfully submitted that the granting of Italian citizenship to petitioner is disputed. Likewise there is no finding by the District Court that petitioner was granted Italian citizenship. It is strongly urged that there is nothing in the Record before this Court to establish this assumed fact as found or is it conceded.

Under the pleadings petitioner established she was native born and this is admitted by the Government. Did not the burden shift to the Government to prove her expatriation? The only evidence on this point was a state-

ment by Mr. Savorgnan at folio 81 of the Record that "technically speaking, the Italian citizenship was bestowed upon her when the decree was issued." While Italian law is a question of fact it is nevertheless a question none other than an Italian legal expert is qualified to testify. It would seem unlikely that Mr. Savorgnan's unsupported statement could be construed as an admission on behalf of the petitioner on this point. As to the Decree itself, the Government elected not to produce it nor is it part of the Record. As to its contents, it is purely speculative. While it is true Exhibit 2 refers to a Royal Decree and as therein stated recites the conceding of Italian citizenship in accordance therewith, something more was required of petitioner before its fulfillment and that was of the taking the oath as prescribed in Exhibit 2. This assumed fact of the granting of Italian citizenship was obviously the principal basis of the Court's Opinion and it is therein that petitioner strongly urges reconsideration.

II.

THE APPLICATION BY PETITIONER FOR ITALIAN CITIZENSHIP WAS NOT TANTAMOUNT TO A NATURALIZATION.

The Court in its Opinion on page 5 states:

> "We thus face two principal questions:
>
> "1. What was the effect upon petitioner's American citizenship of her applying for and *obtaining Italian citizenship?* * * *." (Italics ours.)

The question propounded and answered by the Court finding petitioner became a naturalized Italian citizen as-

sumes one of two vital and controlling facts, namely, *"and obtaining Italian citizenship."*

The Record is clear that petitioner sought and applied for Italian citizenship for her marriage and the Record is likewise as equally clear that she did not fulfill the requirements of taking an oath to obtain it. As to petitioner's applying for Italian citizenship—is this one fact, in and of itself, sufficient to conclude a naturalization status? This must be answered in the negative; the document (Ex. 1) is nothing more than what its name implied, namely an application. Under no conceivable circumstance could this one act alone alter petitioner's American citizenship. Thus it must have been so reasoned by this Court when the words *"and by obtaining Italian citizenship"* were added to the propounded question. The last added words are crucial for it is therein that the Court assumes as a fact and as part of its major premise that petitioner "otbained Italian citizenship."

III.

PETITIONER DID NOT TAKE THE OATH AS REQUIRED TO GAIN ITALIAN CITIZENSHIP OR RENOUNCED HER AMERICAN CITIZENSHIP.

To hold as this Court did, that petitioner became a naturalized Italian citizen, could only come about by this Court's finding in the Record unequivocal testimony or positive proof adduced that the petitioner took the oath as required to gain Italian citizenship. Nothing short of this finding must be made for without this fact established it is impossible to conclude that the petitioner became an Ital-

ian citizen or that she renounced her American citizenship. It must be remembered that the granting of Italian citizenship was not established and to find that petitioner *obtained* naturalization it becomes paramount that petitioner committed certain overt acts to accomplish this, namely:

First: That she renounced her American citizenship.

Second: That she swore allegiance to the King of Italy.

It is respectfully submitted by petitioner that this Court assumed as a fact (the acquisition of Italian citizenship) something which was and can not be found, proven or was conceded. On the contrary, attention is invited to the searching cross-examination made of petitioner relative to her taking of the oath and of petitioner's sworn answer that "the first time I have recited it [Oath] is right now" (R. 10, 20, 21). In response to the question as to whether or not anything happened at the time that would have put petitioner on the alert or apprise her of the fact that she was renouncing her citizenship, petitioner's husband testified that there was nothing and that petitioner did not recite the renunciation of her American citizenship or swear allegiance to the King of Italy (R. 45).

Petitioner contends that her alleged naturalization as an Italian citizen was void and ineffective in its consummation as such upon the following grounds:

1st. That the conceding of Italian citizenship was conditional upon her taking the oath.

2nd. That she did not know that the document (Ex. 2) subscribed by her contained an oath of renouncing her American citizenship or of the swearing of allegiance to the King of Italy (R. 18, 21).

3rd. That she was not requested as therein recited in the document to take the oath as prescribed and required (R. 19).

4th. That she did not as therein recited, pronounce by word of mouth or accede in the renunciation of her American citizenship or swear allegiance to the King of Italy, or do any act knowlingly, intentionally or voluntarily to forfeit her rights as an American citizen (R. 20, 21).

A similar question of the significance to be attached to the mere signature appearing on a foreign oath of allegiance was considered *In the Matter of E———, In Exclusion Proceedings,*[1] decided by the Board in 1943. The facts are these: E——— was born in Montana and when an infant was taken by his father to Canada where his father became a naturalized citizen. E——— later applied for enlistment in Canada and executed an oath of allegiance but which was not attested to by an officer. E——— subsequently applied for admission to the United States as an American citizen. Notwithstanding the fact that his name was signed to the oath, he testified that he did not take the oath of allegiance at that time. In holding that there was insufficient evidence of the intention of E——— to take the oath, the Board held:

> "This statute [the Canadian Act requiring the oath] requires two things to be done, that the oath be taken and it be subscribed to. The appellant did subscribe to the form of oath, but there is nothing on record to indicate that he took the oath. To constitute a valid 'oath,' there must be in the presence of the person

[1]Vol. 1, p. 548 Administrative Decisions Under Immigration and Naturalization Laws of the United States (1940-1943).

authorized to administer it, *an unequivocal act whereby the affiant consciously takes upon himself the obligation of an oath,* * * *. We feel that the act of the appellant in *signing* the form of oath is not the taking an oath within the meaning of Section 2 of the Act of March 2, 1907." (Italics ours.)

The recent case of *In re Gogal*, 75 F. Supp. 268, 270, 271 (1947) considered the matter of an American born taking an oath of allegiance in a foreign army. Petitioner there sought to establish his American citizenship on the ground that he did not knowingly and willingly take the oath. In finding for the petitioner, the Court stated:

> "It is impossible for any person to swear before their God, or affirm, that certain things will be done or not done without *knowing* or *hearing* that to which the oath is being taken. * * *." (Italics ours.)

The nature and consequences of an oath of allegiance was defined in 1872 by Mr. Justice Field when he wrote:

> "The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, *by some open and distinctive act*, he renounces it and becomes a citizen or subject of another soverign." *Carlisle v. United States*, 83 U. S. 147, 154. (Italics ours.)

To impute to the petitioner the knowledge her intended husband may have had of the document (Ex. 2) and the serious consequences of her step together with the fact that no oath was administered or of her understanding that her signature was to be appended to an oath, falls far short of the "unequivocal act whereby affiant consciously takes upon himself the obligations of an oath." Would this Court

under like circumstances of one attempting to gain American citizenship hold an oath had been taken? In matters of this import our Court has gone so far as to delve into the subjective intent and has repeatedly held that the oath may not be taken with conscious or latent reservations notwithstanding the actual outward act of taking the oath. *United States v. Kramer*, 226 Fed. 395; *United States v. Haas*, 51 Fed. Supp. 910; and should not be accepted if it appears the applicant does not comprehend the nature and significance of his oath. *In re Boderick*, 63 Fed. 813.

CONCLUSION

It is earnestly petitioned that this Honorable Court reconsider the assumed fact that petitioner was granted Italian citizenship. It is further respectfully submitted that the Record does not establish that petitioner took the oath as required. The burden of proof on these two vital and determinative points was on the Government.

It is therefore respectfully urged that a rehearing be granted on these points and if this Honorable Court should find that the petitioner was not granted Italian citizenship and that petitioner did not take he oath as required, that the Judgment of the United States Court of Appeals for the 7th Circuit be reversed, or that the matter be remanded to the United States District Court for the Western District of Wisconsin for further hearing thereon.

Respectfully submitted,

CARL A. FLOM,
Madison, Wisconsin,
Counsel for Petitioner

CERTIFICATE

STATE OF WISCONSIN }
DANE COUNTY } ss.

Carl A. Flom being first duly sworn, on oath, deposes and says that he is one of the attorneys for the petitioner named in the above entitled cause; that the petition herein presented is submitted in good faith and not for delay.

CARL A. FLOM

Subscribed and sworn to before me
this 24th day of February, 1950.

ROBERT MORTENSEN
Notary Public, Dane County, Wisconsin.
My Commission expires September 6, 1953.

(SEAL)